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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/651,444	08/30/2003	Joseph R. Royer	5680	8747

7590 11/04/2004  
Milliken & Company  
P. O. Box 1927  
Spartanburg, SC 29304

EXAMINER

GRAY, JILL M

ART UNIT PAPER NUMBER

1774

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/651,444

Applicant(s)

ROYER ET AL.

Examiner

Jill M. Gray

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-70 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-70 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/26/04; 3/19/04; 4/5/04; 12/31/03
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: Figure 1, "29"; Figure 2, "36" and "141"; and Figure 3, "22" and "229". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The use of trademarks such as "AMOCO 7750" and "TINUVIN" has been noted in this application. They should be capitalized wherever they appear and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 and 3-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

More specifically, claim 1 is indefinite because it is not clear as to whether the "thermoplastic fiber comprising a liquid colorant present therein" is a thermoplastic fiber having encapsulated liquid colorant present within the fiber body or if the thermoplastic fiber is formed using a liquid colorant. Accordingly, the metes and bounds for which patent protection is being sought are not clear.

Claim 3 and 4 are indefinite because the broad terms "polyolefin", "polyester" and "polyamide" necessarily embraces "copolymers thereof".

In claims 5 and 6, the language of "wherein said fiber is present as a structure" is indefinite because it is not clear where the fiber is present. Also, a "melt-spun non-woven fiber" is indefinite because it is not clear whether this refers to the fiber per se and thus the processing of said fiber, or if this language is in reference to a non-woven fabric.

### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-6, 33-36, 39-44, 63-64, and 67-68 are rejected under 35 U.S.C. 102(b) as being anticipated by Onaka et al, 5,194,319 (Onaka).

Onaka teaches a thermoplastic fiber comprising a liquid polymeric colorant present therein, per claims 1 and 2. See abstract. The thermoplastic is of the type contemplated by applicants in claims 3-4 and can be a fiber or fabric as required by claims 5-6 and 39-44. See column 2, lines 24-30 and column 6, lines 66-68. In addition, the fiber can contain at least one titanium dioxide pigment as required by claims 33-36. See column 3, lines 18-19. As to the liquid colorant exhibiting a rod-like structure within the fiber, Onaka is silent as to this property. However, it is noted that Onaka teaches similar processing of his thermoplastic fibers as that disclosed by applicants thus, the examiner has reason to believe that the liquid colorant within the thermoplastic fibers of the prior art exhibits a rod-like structure within said fiber.

Therefore, the prior art teachings of Onaka anticipate the invention as claimed in present claims 1-6, 33-36, and 39-44.

Claims 1-30, and 33-70 are rejected under 35 U.S.C. 102(b) as being anticipated by Cipriani 4,167,503.

Cipriani teaches a liquid additive carrier system for coloring polymers and thermoplastic fibers formed therefrom, per claims 1-2 and 5-6. See abstract. The thermoplastic polymer is of the type contemplated by applicants in claims 3-4 and 63-64 (note Example 5) and can contain various additives such as titanium dioxide pigments and UV absorbers, as required by claims 33-38. See column 7, lines 24-54. In addition, Cipriani teaches that his fibers are textured and can be multifilament yarns, as

required by claims 7-24 and 65-66. This teaching necessarily embraces the requirement of claims 25-30 that the fiber be a bulk continuous filament. Moreover, Cipriani teaches the formation of fabrics using his fibers and yarns, per claims 39-62 and 67-70. As to the liquid colorant exhibiting a rod-like structure within the fiber, Cipriani is silent as to this property. However, it is noted that Cipriani teaches similar processing of his thermoplastic fibers as that disclosed by applicants thus, the examiner has reason to believe that the liquid colorant within the thermoplastic fibers of the prior art exhibits a rod-like structure within said fiber

Therefore, the teachings of Cipriani anticipate the invention as claimed in present claims 1-30, and 33-70.

Claims 1-6, 31-32, 63-64 and 67-68 are rejected under 35 U.S.C. 102(e) as being anticipated by Xia, 6,528,564 B1.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Xia teaches thermoplastic fibers comprising a liquid colorant present therein, per claims 1-2 and 5-6. The thermoplastic is of the type contemplated by applicants in claims 3-4 and 63-64 and can contain various additives such as nucleating agents, as required by claims 31 and 32. In addition, Xia teaches the formation of fabrics, per

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claims 39-44 and 67-68. As to the liquid colorant exhibiting a rod-like structure within the fiber, Xia is silent as to this property. However, it is noted that Xia teaches similar processing of his thermoplastic fibers as that disclosed by applicants thus, the examiner has reason to believe that the liquid colorant within the thermoplastic fibers of the prior art exhibits a rod-like structure within said fiber.

Therefore, the prior art teachings of Xia anticipate the invention as claimed in present claims 1-6, 31-32, 63-64, and 67-68.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-3, 5, 7-9, 11, 13-15, 17, 19-21, 23, 25-27, 29, 31-41, 43, 45-47, 49, 51-53, 55, 57-59, 61, and 63-70 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18, 21-30, and 32-54 of copending Application No. 10/651,777. Although the conflicting claims are not identical, they are not patentably distinct from each other because the

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claims of the present application fully encompass the claims of the co-pending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 4, 6, 10, 12, 16, 18, 22, 24, 28, 30, 42, 44, 48, 50, 54, 56, 60, and 62 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-18, 21-30, and 32-54 of copending Application No. 10/651,777. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

No claims are allowed.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

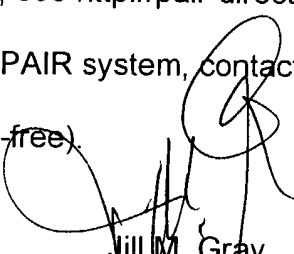
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jill M. Gray whose telephone number is 571-272-1524. The examiner can normally be reached on M-F 10:30-7:00.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jill M. Gray  
Examiner  
Art Unit 1774

jmg